

UNITED STATES DISTRICT COURT FOR THE
DISTRICT OF MASSACHUSETTS

United States of America
ex rel. Jeffrey J. Bierman,

Plaintiff,

v.

Orthofix International N.V., et al.,

Defendants.

Civil Action No. 05-10557 (RCL)

United States of America
ex rel. Marcus Laughlin,

Plaintiff,

v.

Orthofix International, NV,

Defendant.

(formerly Civil Action No. 1:08-cv-11336
(JLT))

**DEFENDANT SMITH & NEPHEW, INC.'S MOTION TO DISMISS THE SECOND
AMENDED AND SUPPLEMENTAL COMPLAINT OF RELATOR JEFFREY J.
BIERMAN**

Pursuant to Rules 9(b) and 12(b)(6) of the Federal Rules of Civil Procedure, Defendant Smith & Nephew, Inc. ("Smith & Nephew") hereby moves for dismissal of the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman.¹ The grounds for Smith & Nephew's motion are set forth in the accompanying *Memorandum of Law in Support of Defendant Smith & Nephew, Inc.'s Motion to Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman* and the *Joint Memorandum in Support of Defendants'*

¹ Smith & Nephew is not named as a defendant in *United States ex rel. Marcus Laughlin*, which has been consolidated with Bierman's action.

Motions to Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J.

Bierman (which is adopted by Smith & Nephew except where noted). For the reasons set forth in the memoranda, Bierman's claims against Smith & Nephew should be dismissed with prejudice.

WHEREFORE, Smith & Nephew respectfully requests that this Honorable Court:

- A. Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman with prejudice as it relates to Smith & Nephew; and
- B. Grant such further relief as this Court deems just and appropriate.

REQUEST FOR ORAL ARGUMENT

Pursuant to Local Rule 7.1(d), Smith & Nephew hereby requests oral argument on the issues raised in this motion, and any opposition to this motion.

LOCAL RULE 7.1 CERTIFICATION

Smith & Nephew, by and through its counsel, herby certifies that the parties have conferred and attempted in good faith to resolve or narrow the issues presented in this motion.

SMITH & NEPHEW, INC.

By its attorneys,

/s/ Fred A. Kelly, Jr.

Fred A. Kelly, Jr. (BBO No. 544046)

Joseph J. Leghorn (BBO No. 292440)

Christine Vargas Colmey (BBO No. 658916)

NIXON PEABODY LLP

100 Summer Street

Boston, Massachusetts 02110

(617) 345-1000

Fax (617) 345-1300

fkelly@nixonpeabody.com

jleghorn@nixonpeabody.com

ccolmey@nixonpeabody.com

Dated: August 17, 2010

Certificate of Service

I hereby certify that this Defendant Smith & Nephew, Inc.'s Motion to Dismiss the Second Amended and Supplemental Complaint of Relator Jeffrey J. Bierman, filed through the ECF system, will be sent electronically to the registered participants as identified on the Notice of Electronic Filing (NEF) on August 17, 2010 and to all non-registered participants by United States mail, first class, postage prepaid.

/s/ Christine V. Colmey

Christine V. Colmey